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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY - 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

KR PARTNERS

KES COMMUNICATIONS, INC.

LORI LYNN FORBES

For Construction Permit for a
New FM Station on Channel 256C
in Waimea, Hawaii

MM Docket No. 93-53

File No. BPH-911001MB

File No. BPH-911003MH

File No. BPH-911004MH

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

KES OPPOSITION TO

its application since KES cannot meet certain conditions precedent to the use of the site. See Motion at page 1.

As KR accurately notes, KES was provided with a letter dated September 26, 1991 from Motorola Communications International, Inc. regarding the availability of the exact site specified in KES's application. However, since Motorola leases such property and any use of such property must meet certain criteria enunciated in Motorola's underlying lease, KR argues that (1) Motorola had no authority to agree to the construction of a new tower, and (2) even if Motorola could agree to such construction, there is no proof that KES could meet the criteria (conditions precedent) set forth in Motorola's underlying lease. See Motion at pages 2-4.

the "Owner's Agent" rather than the "Owner" of the proposed transmitter site. However, KES did not intentionally respond to the question in error.

Attached hereto as Exhibit No. 1 is the Declaration of

[illegible]

error. In fact, there is no dispute over the accuracy of the contact person (Conrad Loui) or his telephone number./²

In light of the above, the Presiding Judge should find that KES did not intend to misrepresent any facts to the Commission, and that Ms. Slade's declaration should serve as a correction to KES's pending application.

III. KES Has Reasonable Assurance of its Proposed Transmitter Site

KR argues that the touchstone for reasonable assurance of site availability is (1) the site owner's or authorized agent's express approval of the site specification or at least some ~~basic specifications between the parties from which reasonable~~

**KES's Technical Consultant Held Specific
Discussions and Negotiations With Motorola**

Attached hereto as Exhibit No. 2 is the Statement of William ("Bill") G. Brown of Bromo, dated May 4, 1993, wherein Mr. Brown sets forth in exacting detail the steps he took to secure a transmitter site for KES. For example, Mr. Brown states the following:

1. That he was retained by KES in September 1991 to locate a site for the new Waimea FM station.

2. That he located an "ideal site" and found that the land was leased to Motorola.

3. That he had previous experience working with Motorola for broadcast sites.

4. That he specifically discussed with Motorola's Conrad Loui the need of KES to construct an approximately 400 foot tower to replace Motorola's 150 foot tower presently on the site. Also, an analysis of the underlying lease indicated that the new tower would fit into the same "footprint" as the existing tower and thus Motorola would not be required to modify its underlying lease.

5. That he contacted a tower manufacturer and received an equipment quote on a tower that would definitely work on the site and meet all of the conditions precedent to the site. (The tower company followed up with a written quote dated September 30, 1991, a copy of which is attached to Mr. Brown's statement.)

6. That Mr. Brown's review of the underlying lease (a copy of which is attached to his declaration) reveals no impediment to the construction and operation of KES's new tower on the Motorola site.

7. That in September 1991, Mr. Brown and Conrad Loui had specific discussions regarding the construction of a new tower, and the conditions precedent that KES would have to meet. Such discussions culminated with Conrad Loui providing KES with a written reasonable assurance letter, dated September 26, 1991.

8. That Mr. Brown has previously worked with Conrad Loui on other broadcast sites in Hawaii. Mr. Brown has knowledge of Motorola's requirements and costs, and none of these requirements or costs would prohibit KES from proceeding at the site chosen.

**Motorola's Site Manager Acknowledges
KES's Reasonable Assurance of the Site**

Also attached hereto as Exhibit No. 3 is the Statement of Conrad Loui, dated April 30, 1993, wherein Mr. Loui states the following:

1. That he discussed the construction of a new tower for KES with Bill Brown on or about September 26, 1991.

2. That Motorola is receptive to the construction of a new tower, provided all the proper local, state and federal permits are obtained, and that the conditions precedent in the underlying lease are met.

3. That KES's operations must not interfere with Motorola's other facilities.

4. That some of the conditions stated by him also appear in Motorola's underlying lease, a copy of which he attached to his declaration.³

³ Mr. Loui faxed a copy of the underlying lease to Bromo along with his declaration on April 30, 1993. Since a copy of the lease is attached to Mr. Brown's declaration (Exhibit No.

5. That all of the facts mentioned in his declaration were true on September 26, 1991 and remain true today.

**KES's Reasonable Assurance Complies With
Motorola's Underlying Lease**

A review of Motorola's underlying lease confirms that there is nothing stated therein that would prohibit Motorola from subleasing a tower site to KES, nor are there any unusual requirements that would prevent KES from operating its facilities from that site. For example, the Addendum to Motorola's Lease, dated March 1986, specifically provides Motorola with authority to sublet or license others to use the

might have to employ certain filters or a specific model antenna in order to comply with the site's engineering specifications or non-interference guidelines does not in any way detract from the availability or suitability of the site./⁴ According to Mr. Brown, KES will be able to operate its transmitting tower at the Motorola site despite any accommodations it might have to make in order to comply with operating criteria established by either Motorola or the terms of the underlying lease.

As demonstrated above, KES, through Bromo, held specific discussions with Conrad Loui about the availability and suitability of the proposed transmitter site. During those discussions, consideration was given to Motorola's underlying lease and any conditions precedent or restrictions contained therein. Bromo then contacted a tower manufacturer to ensure KES could construct a tower within those technical and physical (land size) parameters. As a result, both Motorola's site expert and KES's technical expert concluded and agreed that the

⁴ Although KES does not now have any zoning permits from the local, state or federal authorities with respect to the proposed construction of its tower, such zoning permits are not required by the FCC at this time. The Commission has long held that local requirements for land use will be left to the local authorities and that such matters are not an issue unless there is a reasonable showing that the applicant will be unable to obtain approval of his plans from the local authorities. See e.g., *Radio Ridgefield, Inc.*, 47 FCC 2d 106, 30 RR 2d 447 (Rev. Bd. 1974). Given the fact that Motorola currently utilizes the site for various communications operations, it is reasonable to assume that KES would also secure permission from the local, state and federal authorities for the construction and operation of its facility. To date, KES has not received any indication that it will be unable to secure such approvals.

site would work for KES. KES, through Bromo, then obtained written reasonable assurance of the proposed transmitter site.

Conclusion

In establishing the new site certification form to be appended to FCC Form 301, the Commission declared in its Order (*In the Matter of Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*), 58 RR 2d 776, 782 (1985) that "Commission requirements will be satisfied when an applicant has contacted the property owner or owner's agent and has obtained reasonable assurance in good faith that the proposed site will be available for the intended purpose." Based upon the foregoing, KES has reasonable assurance of both the availability and suitability of its proposed transmitter site. Accordingly, KR's Motion should be DENIED.

Respectfully submitted,

KES COMMUNICATIONS, INC.

By:



Cary S. Tepper, Esq.

Its Attorney

Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

(202) 362-1100

May 5, 1993

EXHIBIT No. 1

(Declaration of Karen Eileen Slade)

**DECLARATION OF
KAREN EILEEN SLADE**

My name is Karen Eileen Slade. I am the 100% owner of KES Communications, Inc. ("KES"). I am submitting this statement in response to the petition to enlarge the issues that KR Partners filed against KES on April 15, 1993.

In September 1991, I retained Bromo Communications, Inc. to prepare the technical exhibit for KES's FCC Form 301 Application. To the best of my recollection, Bill Brown of Bromo Communications was the engineer primarily responsible for preparing the technical exhibit.

As part of his work, Mr. Brown travelled to Hawaii to secure a transmitter site for KES. On behalf of KES, Mr. Brown secured a site from Motorola Communications International, Inc. ("Motorola"). Although I never communicated directly with Motorola, Mr. Brown told me that he did, and he obtained a letter from Motorola's Conrad Loui to document the fact that Motorola had given KES permission to construct a new radio tower on a specific site. I knew that Mr. Brown is very experienced in radio site acquisition and application preparation, so I delegated these matters to him.

Prior to the filing of KES's application with the FCC, I submitted a draft copy of FCC Form 301 to my previous counsel. I had pencilled in my responses for subsequent review by my counsel. I now realize that I inadvertently made a mistake in filling out that part of the application form with respect to antenna site certification. On page 24 of KES's application, Mr. Conrad Loui and his telephone number is listed as the site contact person. This information remains correct. However, neither Mr. Loui nor Motorola actually own the land where KES proposes to construct its tower. I always knew that Motorola controlled the land specified

as KES's antenna site, and that Mr. Brown had negotiated with Motorola's Conrad Loui. At that time, I was thinking of "control" and not "ownership." I now realize that Motorola simply controls the land by virtue of its lease, but that Motorola does not actually own the land. Therefore, I should have checked the box for "Owner's Agent" instead of the box for "Owner." I did not purposely fill out the application form in error.

Under the penalty of perjury, I declare that the foregoing facts are true and correct to the best of my knowledge, information and belief.

May 3, 1993
Date

Karen Eileen Slade
Karen Eileen Slade
President,
KES Communications, Inc.

DECLARATION OF
KAREN EILEEN SLADE

My name is Karen Eileen Slade. I am the 100% owner of KES Communications, Inc. ("KES"). I am submitting this statement in response to the Petition to Enlarge the Issues that KR Partners filed against KES on April 15, 1993.

In September 1991, I retained Bromo Communications, Inc. to prepare the technical exhibit for KES's FCC Form 301 Application. To the best of my recollection, Bill Brown of Bromo Communications was the engineer primarily responsible for preparing the technical exhibit.

As part of his work, Mr. Brown travelled to Hawaii to secure a transmitter site for KES. On behalf of KES, Mr. Brown secured

as KES's antenna site, and that Mr. Brown had negotiated with Motorola's Conrad Loui. At that time, I was thinking of "control" and not "ownership." I now realize that Motorola simply controls the land by virtue of its lease, but that Motorola does not actually own the land. Therefore, I should have checked the box for "Owner's Agent" instead of the box for "Owner." I did not purposely fill out the application form in error.

Under the penalty of perjury, I declare that the foregoing facts are true and correct to the best of my knowledge, information and belief.

Date

Karen Eileen Slade
President,
KES Communications, Inc.

EXHIBIT No. 2

**(Declaration of William G. Brown
and Attachments)**

TECHNICAL STATEMENT
OF
WILLIAM G. BROWN

I, William G. Brown, attest to the following information. I am the President of Bromo Communications, Inc., ("Bromo") and I have been involved with radio and television broadcast technical consulting and ownership for the past twenty-six years. Bromo has represented clients on technical matters before the Federal Communications Commission for over 15 years. Bromo has a client base of about 500 clients from Puerto Rico to Hawaii and our reputation is a matter of record with the Commission.

Bromo was employed in September 1991 by Karen Slade of KES Communications, Inc., ("KES") to locate a site for a new FM station to serve Waimea, Hawaii. We located an ideal site and found it was leased to Motorola International, Inc. I have had previous experience working with Motorola for broadcast sites. Therefore, I contacted Mr. Conrad Loui, Manager of Site Development for Motorola in Hawaii, Alaska and the Western Pacific region.

Currently, Motorola has a 150 foot tower on this site. In September 1991, I explained to Mr. Loui that we would require approximately a 400 hundred foot tower. Mr. Loui

and I briefly discussed two options for KES. One option would have KES replace the current Motorola 150 foot tower with an approximately 400 foot KES-owned structure. Motorola would then relocate their equipment on the new tower. Therefore, Motorola would provide the ground lease and rent space from KES on the new tower. The other option would be for Motorola to build the taller tower and KES would lease tower and equipment space from Motorola. The site is leased by Motorola and a copy of the underlying lease is attached to this statement. As can be seen on the Motorola underlying lease, Motorola can develop the site electronically as they deem necessary. As long as the new tower will fit into the same footprint, Motorola would not be required to modify their underlying lease.

I then contacted Mr. Grant Balwinz of Tower Specialties, Inc., ("TSI"). TSI is a tower manufacturing firm that has specialized in the manufacture of towers that are short guyed. I determined from TSI that it would be possible to build approximately a 400 foot tower on the site in Hawaii and maintain a 100 foot guy radius. I am enclosing a copy of the quote received from TSI for such a tower.

It should be pointed out that in September 1991, Mr. Loui stated he had good relations with the site owner and felt he could obtain additional property if it were required.

I requested from Mr. Loui that he furnish KES with a letter stating that the property was available for a new broadcast facility. Given the probability of multiple applicants for the Waimea allocation both Mr. Loui and I felt it premature to investigate the exact details of the two options or investigate local permits. It was understood that KES must obtain permission to build the tower from all responsible governmental agencies. I personally have previously worked with Mr. Loui on other broadcast sites in Hawaii and have knowledge of Motorola's requirements and costs and none of these requirements or costs would prohibit KES from utilizing the site chosen.

I should also point out that at the time of my discussions with Mr. Loui and Mr. Balwinz, we only had preliminary terrain studies available showing that approximately a 400 foot tower was required. It was not until we prepared the application that we determined the exact tower height of 430 feet. Both Mr. Loui and Mr. Balwinz told me that the extra thirty feet was insignificant.

In summary, in September 1991, I contacted Conrad Loui, a Motorola representative, and requested permission for KES to locate their transmitting facility at the Motorola electronic site. I gave him the requirements of the proposed KES facility. Mr. Loui felt there would be no problem with

KES locating on that site. Mr. Loui gave us assurance in writing that the property was available. The attached copy of the Motorola underlying lease allows Mr. Loui to authorize the building of such a tower without further notice from the landowner. Knowing that we must stay within the present Motorola leased boundaries so as not to be required to renegotiate the underlying lease, we contacted a tower manufacturer. TSI said the proposed tower was possible and gave us a quote.

Therefore, KES did obtain and still has reasonable assurance from Motorola that their site is available for the KES proposed facilities. Motorola has the authority to grant such a request under the provisions of their underlying lease with the property owner.

The foregoing statement are true to the best of my belief and are made under the penalty of perjury. This the 4th day of May, 1993.



William G. Brown

TOWER SPECIALTIES, INC.
P.O. BOX 649
WAYCROSS, GA. 31502
PHONE # 912-285-2133
FAX # 912-283-4334

PROPOSAL SUBMITTED TO:
BROMO COMMUNICATIONS

PHONE #:
912-638-5608

DATE:
9-30-91

ADDRESS:
P.O. BOX M

JOB NAME:
TOWER INSTALLATION

CITY & STATE:
ST. SIMONS ISLAND, GA. 31522

JOB LOCATION:
HAWAII

ATTN:STU GRAHAM

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATES FOR:
ENGINEER, FABRICATE, AND ERECT A 400 FOOT TOWER WITH A
36/24 INCH FACE. THE TOWER WILL BE GUYED AT 100 FOOT
GUYING RADIUS.

DONE AT COST PLUS EXPENSE.

THE CUSTOMER SHALL PROVIDE EASEMENT TO A CLEARED STRUCTURAL SITE SUITABLE FOR THE PASSAGE OF VEHICLES AND EQUIPMENT NECESSARY TO COMPLETE THE JOB.

WE ASSUME NORMAL SOIL OF 4000 PSF, IF ABNORMAL SOIL EXISTS SPECIAL ANCHORS WILL BE REQUIRED AND AN ADDITIONAL CHARGE WILL BE ADDED.

BID PRICE: 98,500.00

F.O.B.: WAYCROSS, GA.

WE PROPOSE HEREBY TO FURNISH ALL MATERIAL AND

MOTOROLA
COMMUNICATIONS INTERNATIONAL, INC.
NETWORK SERVICES DEPARTMENT
99-1180 IWAENA STREET AIEA, HAWAII 96701
PH (808) 488-7286 / FAX (808) 488-7280

DATE: April 30, 1993
TO: BROMO Communications, Attn: Mr. Bill Brown
FAX: 912-638-5690
FROM: Conrad Loui

- * FAX CONSISTS OF 9 PAGES, INCLUDING THIS PAGE.
- * IF THERE ARE ANY PROBLEMS IN RECEIVING THIS FAX, PLEASE CALL (808) 488-7286

RE: New FM Broadcast, Karen Slade

Following is a copy of the underlying lease.

Regards,


Conrad Loui

Note: This information contained in this FAX transmission is confidential and proprietary and only intended for the individual addressed above. If the reader of this document is not the intended recipient and have received this document in error, any copying and distribution is prohibited. If you have received this in error, please notify us by telephone and return the original to us at the address listed above by mail.
THANK YOU.

ANTENNA SITE LEASE
(Land Lease)

LANDLORD

Company Name: _____ Commencement Date: _____
Address: _____ Initial Term: _____
City & State: _____ Zip Code: _____

TENANT

MOTOROLA INC. Attention: _____
Address: 99-1180 Iwaena Street
City & State: Aiea, Hawaii Zip Code: 96701
Site Number: _____ Site Location: Koloko Mauka

Coordinates: Latitude 19° 43' 15.5" N Longitude 155° 55' 25.5" W

Fixed Rental Per Month: _____ Renewal Term: _____
Renewal Notice Due: _____

Legal Description: Exhibit "A" Attached. Plus Exhibits "B" & "C" and Addendum, all of which are incorporated herein by this reference.

FILL IN ALL BLANKS. READ BOTH SIDES. THIS LEASE CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES AND SHALL SUPERSEDE ALL PRIOR OFFERS, NEGOTIATIONS, AND AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

MOTOROLA INC.

Landlord: _____ By: _____
By: _____ Print Name: _____
Print Name: _____ Print Title: _____
Print Title: _____ Date: March 27, 1986
Date: 3-1-1986

LAND LEASE

(1) Notices. Any notice or demand required or permitted to be given or made hereunder shall be given or made by mail or Western Union telegram, addressed as set forth on the reverse side of this Lease. Any such notice or demand shall be deemed to have been given or made at the time it is sent. Motorola or the Landlord may from time to time designate any other address for this purpose by written notice to the other party.

(2) Lease of Site. Landlord leases the site and grants the rights of access to Motorola. Copies of any easements required will be attached and made part of this Lease. Exhibit "A" shall include a complete site legal description.

(3) Amendment; Waiver. No revision of this Lease shall be valid unless made in writing and signed by an Area Manager or higher authority of Motorola and an authorized agent of the Landlord. No provision may be waived except in a writing signed by the party to be charged with such waiver.

(4) Use of Site. The leased premises are to be used for the installation, operation, and maintenance of radio transmitting and receiving equipment along with associated other electronic equipment which may be passive and/or active. Motorola shall have the right to install upon the site radio towers, buildings, fencing, and other accessories necessary to the successful and secure operation of the above mentioned radio equipment. Motorola shall have the unrestricted right to enter or leave the site at all reasonable times. All equipment or other property installed upon the premises shall at all times be personal property of Motorola or its licensees or subtenants and, at Motorola's option, may be removed by Motorola at any time during the term or within a reasonable time after expiration of this Lease.

(5) Term. The initial term of this Lease is indicated on the reverse side hereof. The expression "term" refers to the initial term, renewal term, and any extension of either, unless context indicates otherwise. If the site becomes unfit or undesirable for use for Motorola's purposes, Motorola may terminate this Lease by notice to Landlord which shall be effective 30 days after it is mailed by Motorola. If Motorola holds over at the end of the term, it shall create a month to month tenancy subject to the provisions of this Lease. Motorola, providing Motorola is not then in default, shall have the right to renew the Lease for an additional term as stated on the reverse side subject to all the conditions and promises contained herein. Including this paragraph, upon giving Landlord notice of its intent not later than the date indicated on the reverse side of this Lease. Rent for the renewal period shall be negotiated, but no increase in rent shall be limited to documented prior rate increases in Landlord's direct costs.

~~For as long as Landlord is not in default hereunder, Motorola shall pay Landlord 10% of the fixed Monthly Rental stated on the reverse side of this Lease from the commencement date until the first day of the first full calendar month after the first piece of transmitting or receiving equipment has been installed on the premises at which time Motorola shall begin to pay the full Fixed Monthly Rental each month during the remaining term of this Lease. Prior to the date that the full Fixed Monthly Rental is due, Motorola shall have the option to terminate this Lease.~~

(7) Liability. Motorola will carry during the term of this Lease the following insurance with the customary coverages and exclusions:

bodily injury - \$1,000,000.

for all injuries sustained by more than one person in any one occurrence.

Property Damage - \$1,000,000.

for damage as a result of any one accident.

(8) Condition of Site. Upon termination or expiration of this Lease, Motorola will surrender the site to Landlord in good condition except (a) for reasonable wear and tear, or (b) for damage due to causes beyond Motorola's control or without its fault or negligence, or (c) for both.

(9) Management of Site Engineering. (a) Motorola agrees to permit existing lessees of Landlord using the premises or other premises now or hereafter acquired, owned, or leased by Landlord within 5 miles of the leased premises to continue use of same for the duration of their leases with Landlord.

(b) Landlord agrees not to permit any party (not already occupying or using them) to occupy or use the leased premises or (i) any land or buildings now or hereafter acquired, owned, or leased by Landlord within 5 miles of the leased premises, for radio/television transmitting without Motorola's consent.

~~Landlord shall not enter into any agreement of sale for any part of the premises or any premises now or hereafter acquired or owned by Landlord within 5 miles of the leased premises without Motorola's consent which shall not be unreasonably withheld. Furthermore, Landlord shall not enter into any agreement, lease, or license which permits the use of the leased premises or any premises now or hereafter acquired, owned, or leased by the Landlord within 5 miles of the leased premises for radio frequency transmission without Motorola's consent which shall not be unreasonably withheld.~~

~~Landlord agrees that Motorola shall have exclusive engineering supervision over Landlord's and its licensees' and lessees' and those holding under them, if any, radio, television or microwave transmitting or receiving equipment located on the premises. Such supervision shall include without limitation in frequency coordination and acceptability, (ii) engineering regulations, and establishment of standards and practices consistent with~~

~~necessary for the avoidance or elimination of interference in the community of equipment operating on same frequencies, protective devices and means of access.~~

(a) Landlord agrees to eliminate, without cost to Motorola, any interference to Motorola's operation as a result of Landlord's or another party's subsequent installation on the land or buildings described in subparagraph (b) in a timely manner, not to exceed 60 days. If such interference cannot be eliminated within a reasonable length of time, not to exceed 60 days, Landlord shall remove the party causing the interference to cease using the equipment which is causing the interference except for short tests necessary for the elimination of the interference.

(b) Motorola agrees not to interfere with radio transmission or reception equipment owned by Landlord or by anyone holding under Landlord where such equipment is located on the leased premises and is so located in accordance with this Lease. If Motorola should cause such interference, Motorola shall eliminate it in a timely manner.

(10) Warranty of Title and Right to Lease. (a) Landlord warrants that: (i) Landlord owns the leased premises in fee simple and has rights of access thereto, (ii) Landlord has the right to make this Lease, and (iii) Motorola shall have quiet and peaceful possession of the premises during the term. Landlord is prepared to document its interests in the premises.

~~Landlord warrants that the making of this Lease and the performance thereof shall not be subject to any laws, ordinances, restrictive covenants, or the provisions of any mortgage, lease, or other agreements under which Landlord is bound and which restricts the Landlord in any way with respect to the use or disposition of the premises. Motorola agrees to secure any zoning charges required for Motorola's proposed construction of tower and building. Landlord recognizes its obligation to cooperate with Motorola in the securing of any such zoning changes.~~

(11) Easements. Landlord agrees that, from the date of execution of this Lease, it shall obtain Motorola's consent before granting any easements, or further easements, or before granting any other party any right, or further right, of access in, on, across, or under the premises. Motorola agrees not to withhold unreasonably its approval.

(12) Motorola's Right to Maintain Security. Motorola at its cost and expense may place, construct, and maintain a fence around each separately, or the entirety of, the base of any tower, any equipment building, or any guy anchors, or undertake any other appropriate means, to restrict access thereto.

(13) Maintenance and Repairs; Utilities. Motorola shall perform all repairs necessary to keep its improvements on the premises and easements or other access to the premises in good and tenable condition. Motorola shall arrange for utilities. Motorola shall pay utility companies for utilities consumed by Motorola.

(14) Tenant's Default and Right to Cure. Each of the following shall be deemed a default by Motorola and a breach of this Lease: (a) Non payment of rent, including any adjustments in rental amount as required hereunder, due hereunder for a period of 30 days after receipt of notice of such failure from Landlord. ~~Any long-term failure by Motorola to pay rent in accordance with the agreement of both parties shall not be immediately due and payable in whole, it shall be immediately due but payable in equal installments over 12 months.~~

(b) Failure to perform any other covenant for a period of 45 days after receipt of notice from Landlord specifying the failure. No such failure, however, shall be deemed to exist if Motorola shall have commenced good faith efforts to rectify the same within such 45 day period and provided that such efforts shall be prosecuted to completion with reasonable diligence. Delay in rectifying the same shall be excused if due to causes beyond the reasonable control of Motorola.

(c) Any vacation or abandonment of the premises by Motorola for more than 3 consecutive months unless ordered to do so by duly authorized legal authority or other cause beyond Motorola's reasonable control.

(15) Assignment. Landlord may assign this Lease but said assignee is responsible and Landlord remains liable to Motorola for the performance of all the terms and conditions of this Lease.

(16) Severability. If any provision of this Lease shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall be binding upon the parties and shall be enforceable as though said invalid, illegal, or unenforceable provision were not contained herein, provided however that, if the invalid, illegal, or unenforceable provision goes to the heart of this Lease, the Lease is terminated.

(17) Benefit. The provisions of this Lease apply to and are binding upon the heirs, successors, executors, administrators, and assigns (the latter if permitted) of the parties.

(18) Short Form Lease. The parties will, at any time upon the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Lease setting forth a description of the premises, the term of this Lease and any portions hereof, excepting the rental provisions.

(19) Subordination. Motorola agrees that this Lease, or subleases and licenses under this Lease, shall be subordinated to any mortgage or trust deed now or hereafter in force against the premises unless such document provides otherwise. Landlord agrees, however, that if Motorola is not then in default, such subordination shall not result in the rights of Motorola under this Lease being cut off or affected by foreclosure of any such mortgage or trust deed.

ADDENDUM TO ANTENNA SITE LEASE DATED MARCH / , 1986

Paragraph 4 is amended to read: Motorola may sublet or license others to use the site. The use of the site shall mean and restrict use to the tower and within the building for radio transmitting equipment only, without the prior written consent of Landlord.

Paragraph 5 is modified as follows: By deleting the entire last sentence.

Paragraph 6 is deleted in its entirety.

Paragraph 9 is amended and modified as follows:

Paragraph 9(b) (ii) any land or buildings now or hereafter acquired, owned or leased by Landlord within five (5) miles of the lease premises. for radio/television transmitting